

1 Jeffrey C. Misley, WSBA #33397
2 jmisley@sussmanshank.com
3 Garrett S. Eggen (Admitted Pro Hac Vice)
4 geggen@sussmanshank.com
5 SUSSMAN SHANK LLP
6 1000 SW Broadway, Suite 1400
7 Portland, OR 97205-3089
8 Telephone: (503) 227-1111
9 Facsimile: (503) 248-0130

Honorable Whitman L. Holt
Chapter 11

10 *Attorneys for Matthew McKinlay,*
11 *Plan Agent*

12 UNITED STATES BANKRUPTCY COURT
13 FOR THE EASTERN DISTRICT OF WASHINGTON

14 In re:

15 MENSIONIDES DAIRY, LLC, and
16 ART & THERESA MENSIONIDES,

17 Debtors.

CHAPTER 11

No. 18-01681-WLH11 LEAD CASE

No. 18-01683-WLH11

DECLARATION OF MATTHEW
MCKINLAY IN SUPPORT OF
MOTION TO SELL DAIRY'S
REMAINING HEIFERS AND MILK
COWS BY AUCTION ON A
ROLLING BASIS

21 I, Matthew McKinlay, declare:

22 1. I was appointed as Plan Agent (the "Plan Agent") of the Debtors' First
23 Amended Joint Chapter 11 Plan of Reorganization [Docket No. 479] (the "Plan")
24 pursuant to the Order Appointing Plan Agent [Docket No. 959] (the "Plan Agent
25 Order"). I have personal knowledge of the facts set forth herein. I submit this
26 Declaration in support of the Motion to Sell Dairy's Remaining Heifers and Milk Cows

DECLARATION OF MATTHEW MCKINLAY -
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SUSSMAN SHANK LLP
ATTORNEYS AT LAW
1000 SW BROADWAY, SUITE 1400
PORTLAND, OREGON 97205-3089
TELEPHONE (503) 227-1111
FACSIMILE (503) 248-0130

1 by Auction on a Rolling Basis (the “Motion”)¹.

2 2. Upon my appointment as Plan Agent pursuant to the Plan Agent Order, I
3 immediately turned my attention to preserving and maintaining the Debtors’ business
4 operations and assets in preparation for the ultimate sale of the Dairy and Dairy Assets.
5 However, upon taking control of the Debtors, I discovered that the Dairy’s available
6 cash was seriously deficient to fund operations or meet the Dairy’s ongoing financial
7 obligations. This required me to request and receive additional financial support from
8 Northwest in order to stabilize operations and fund ongoing expenses.

9 3. I also determined that the Mensonides family had taken substantial
10 actions to disrupt the Dairy’s operations. These actions included, among other things:

- 11 a) removing critical assets and equipment from the Dairy with the help of third
12 parties such as Narom and Sharon Berg, Pioneer Commodities LLC and
13 others;
- 14 b) withdrawing substantial funds belonging to the Dairy for unauthorized
15 purposes;
- 16 c) leaving almost no feed on site to care for the livestock;
- 17 d) notifying employees that the Dairy was “shutting down” and paying out all
18 accrued paid time-off (PTO); and
- 19 e) Removing and shredding critical business records, including vehicle titles,
20 employee files, the Nutrient Management Plan, and so forth.

21 4. I also discovered that the Dairy was missing several critical pieces of
22 equipment that collectively held an appraised value of \$467,200.00 (the “Missing
23 Equipment”).

24 5. On August 10, 2022, the court held a hearing on the Enforcement Motion
25 [Docket No. 964]. At the hearing, the court referred the parties to Judge Corbit to
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¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

1 attempt to settle their disputes. Unfortunately, mediation with Judge Corbit yielded
2 no tangible results.

3 6. While I was ultimately able to stabilize the Dairy's milk production and
4 milking herd and cleansed the livestock herd of bacillus cereus², my problems with the
5 Mensonides and other parties in interest continued. In particular, I began to discover
6 that much of the Missing Equipment had been relocated through one or more of the
7 Mensonides family members' efforts throughout the greater Mabton, Washington area.
8 As a result, I sought to retrieve the Missing Equipment and other property belonging
9 to the Dairy.

10 7. In addition to retrieving Missing Equipment and reviving the Dairy's
11 operations, I also recognized that removal of the Mensonides' family members from
12 the Dairy would be necessary to implement the sale of the Dairy. To begin this
13 process, I offered a solution that would result in Art and Teresa Mensonides as well as
14 Auke and Joreen Bruinsma (the "Bruinsmas") consensually vacating the Dairy
15 premises in a reasonable time and manner. Unfortunately, the Mensonides and
16 Bruinsmas rejected this offer, prompting me to obtain a court order confirming his
17 ability to terminate the possessory interests of and initiate eviction proceedings against
18 the Mensonides and Bruinsmas.

19 8. In addition to the above referenced issues, the Dairy also began
20 experiencing several unrelated problems that were also beyond my control. As a result
21 of the worldwide supply chain and inflationary issues, lower than projected 2022
22 Dairy-grown and harvested feed volume, price gouging and other factors, the Dairy's
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24 ² Bacillus cereus is a spoilage microorganism that has been present in the Dairy's herd for several
25 years. This prevalence of this contaminant exceeded thresholds set by the Northwest Dairy
26 Association ("NDA"), which limited how the Dairy's milk could be produced. In November 2022,
NDA notified the Plan Agent and his staff that the contaminant had been reduced significantly over
the past four months, and that NDA is now able to expand the number of products that the Dairy's
milk can be used for. This also opens the Dairy to new processing facilities (including the one ~10
miles away from the Dairy in Sunnyside, WA) the Dairy's milk can be sent to.

1 feed costs exceeded initial projections by roughly 30%. This, in addition with
2 unbudgeted manure management freight costs, seriously impacted the Dairy's cash
3 flow. Further, milk prices have dropped by roughly 20% over the last several months
4 which has resulted in significantly reduced revenues to the Dairy.

5 9. Given the Dairy's liquidity issues resulting from the foregoing problems,
6 I determined it was necessary to sell up to 2,500 head of the Dairy's replacement heifer
7 cattle (the "Listed Dairy Cattle") by auction to reduce operating expenses and generate
8 much needed cash to continue operating the Dairy and work towards a sale of the Dairy
9 and its assets.

10 10. While the sale of the Listed Dairy Cattle will generate much needed cash
11 for the Dairy, operating and administrative costs have continued to strain the Dairy's
12 liquidity. Specifically, the rising feed and administrative costs combined with lower
13 revenues have made it difficult to maintain the Dairy's herd. I believe that these
14 problems will only be exacerbated throughout the coming winter months. In addition
15 to the foregoing, I have determined that the sale of substantially all of the Dairy Assets
16 to a prospective purchaser as a going concern under acceptable terms is becoming less
17 likely. As a result, I believe it is necessary to sell the Dairy's remaining Livestock to
18 generate cash to pay the Dairy's vendors and other operating expenses while also
19 sharply reducing such expenses going forward, while I prepare to auction the
20 remaining Dairy Assets.

21 11. I have selected Toppenish Livestock ("Toppenish") as the auctioneer
22 responsible for selling the Livestock. I propose to sell the Heifers at various auctions
23 held by Toppenish during the period from January 20, 2023 through January 31, 2023
24 and the Milk Cows at various auctions held by Toppenish during the period from
25 February 21, 2023 through March 14, 2023. The above provided periods are merely
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1 estimates, and I intend to exercise my reasonable business discretion in determining
2 when to sell the Livestock and how many Livestock to sell at any given time in order
3 to ensure the Dairy maintains enough capital to continue operating the Dairy.

4 12. Toppenish has agreed to a compensation structure whereby it will be paid
5 a 5% commission rate from the auction proceeds at each auction held and certain other
6 expenses incurred in auctioning the Livestock. I believe that Toppenish's extensive
7 experience auctioning cattle in the Eastern Washington area will result in the highest
8 and best offers for the Livestock.

9 13. To the extent the Dairy's existing funds are insufficient to do so, I shall
10 set aside up to \$2.25 million in sale proceeds derived from the various sales of
11 Livestock to be used to pay the Dairy's vendors in the ordinary course of business and
12 pursuant to the payment terms now existing between the Dairy and such vendors.
13 AgWest has agreed to the proposed reserve of \$2.25 million which I have estimated as
14 the amount necessary to pay the Dairy's vendors to satisfy their outstanding claims
15 upon the conclusion of this case. I intend to set aside this amount out of an abundance
16 of caution and to avoid any potential harm to the Dairy's operations resulting from the
17 failure to pay the Dairy's vendors in the ordinary course of business and pursuant to
18 the payment terms now existing between the Dairy and such vendors.

19 14. The Dairy's cash flow problems have limited the options available to sell
20 the Dairy Assets. These cash flow problems are due to a variety of unforeseen
21 circumstances, including significant operating and administrative costs, reduced
22 revenues, and the actions taken by the Mensonides and others to frustrate my ability
23 to operate the Dairy. While I have taken substantial steps towards mitigating these
24 problems, these efforts have come at a great administrative cost and will likely
25 continue until I can consummate the sale of the Dairy Assets. In addition, I continue
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1 to incur considerable expenses caring for the Livestock in light of the harsh winter
2 conditions that will likely only worsen over time. I have determined that the sale of
3 the Livestock as effectively and efficiently as possible under the circumstances is
4 necessary.

5 15. I also believe that Toppenish's experience auctioning farming cattle in
6 the Eastern Washington area will help maximize the value of the Livestock to the
7 benefit of the Debtors' creditors. The collective value of the Livestock to be sold by
8 auction is expected to net a substantial recovery for the Debtors' estate. I believe that
9 this recovery would likely be unattainable if any other sale procedure was used to sell
10 the Livestock.

11 16. Toppenish's experience auctioning cattle will streamline the process for
12 selling the Livestock without incurring substantial administrative expenses. In
13 addition, selling the Livestock on a rolling basis and authorizing me to use such sale
14 proceeds to pay the Dairy's vendors will ensure that the Dairy has the sufficient cash,
15 feed and other commodities to continue operating until I succeed in selling the Dairy
16 Assets. Finally, I have determined it is best to initiate a phased approach to the sale of
17 assets, beginning with Livestock and moving on to equipment and the real property,
18 which will be the subject of motions to be filed shortly hereafter. Given the cash
19 position of the Dairy, I have determined that the sale by an experienced auctioneer on
20 a short timeframe will likely yield the greatest recoveries for the Livestock and allow
21 the Dairy to continue operating until the conclusion of this case.

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DECLARATION OF MATTHEW MCKINLAY -
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SUSSMAN SHANK LLP
ATTORNEYS AT LAW
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PORTLAND, OREGON 97205-3089
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FACSIMILE (503) 248-0130

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Dated this 6th day of January, 2023, at Boise, Idaho.

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Matthew McKinlay

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FACSIMILE (503) 248-0130

1 CERTIFICATE OF SERVICE

2 I, Janine E. Hume declare as follows:

3 I am employed in the County of Multnomah, state of Oregon; I am over the
4 age of eighteen years and am not a party to this action; my business address is 1000
5 S.W. Broadway, Suite 1400, Portland, Oregon 97205-3089, in said county and state.

6 I certify that on January 6, 2023, I served, **via first class mail**, a full and
7 correct copy of the foregoing **DECLARATION OF MATTHEW MCKINLAY**
8 **IN SUPPORT OF MOTION TO SELL DAIRY'S REMAINING HEIFERS**
9 **AND MILK COWS BY AUCTION ON A ROLLING BASIS**, to the parties of
10 record, addressed as follows:

11 James L. Carman
12 1116 11th Street
Benton City, WA 99320

13 Jennifer A. Carman
14 1116 11th Street
Benton City, WA 99320

15 Danny R. Hicks
16 4441 Becker Rd.
Toppenish, WA 98948

17 Angie Lee
18 Office of the Attorney General
800 Fifth Ave., Suite 2000
19 Seattle, WA 98104

20 I also certify that on January 6, 2023, I served the above-referenced
21 document(s) on all ECF participants as indicated on the Court's Cm/ECF system.

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1 I swear under penalty of perjury that the foregoing is true and correct to
2 the best of my knowledge, information, and belief.
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4 Dated: January 6, 2023.
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6 /s/ Janine E. Hume
7 Janine E. Hume, Legal Assistant
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